

AMENDED IN ASSEMBLY MARCH 13, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 239

Introduced by Assembly Member Ortiz

February 6, 1997

An act to amend Section 3622 of the Family Code, and to amend Sections 11356 and 11475.1 of the Welfare and Institutions Code, relating to family law, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 239, as amended, Ortiz. Family law: support.

(1) Existing law requires a court to make an expedited support order if specified information is filed, including the minimum amount the obligated parent or parents are required to pay pursuant to the statewide uniform guideline for support or specified minimum basic standards for adequate care.

This bill instead would specify that the alternative to the statewide uniform guideline would be the minimum basic standards of adequate care for Region 1, as specified.

(2) Existing law requires the use of simplified summons, complaint, and answer forms for specified child support actions brought on and after January 1, 1997.

This bill would ~~authorize~~ *require* the district attorney to continue to use until ~~July 1~~ *September 30*, 1997, the procedures and forms in effect on December 31, 1996, for establishing paternity and support orders, *unless the district*

attorney has implemented the new procedures and forms prior to the effective date of this bill.

(3) This bill would declare that it shall take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature finds and declares
2 both of the following:

3 (1) The forms required by subdivision (c) of Section
4 10475.1 of the Welfare and Institutions Code cannot be
5 adopted by the Judicial Council and incorporated into the
6 Statewide Automated Child Support System (SACSS)
7 and by the Los Angeles ACSES Replacement System
8 (ARS) by January 1, 1997.

9 (2) The adoption of the forms specified above and
10 their incorporation into SACSS and ARS are essential to
11 the successful implementation of Chapter 957 of the
12 Statutes of 1996.

13 (b) Therefore, it is the intent of the Legislature to
14 provide an orderly transition to the procedures set forth
15 in Chapter 957 of the Statutes of 1996 by enabling district
16 attorneys the option of utilizing the procedures in
17 Chapter 957 or the procedures in effect prior to the
18 operative date of Chapter 957.

19 SEC. 2. Section 3622 of the Family Code is amended
20 to read:

21 3622. The court shall make an expedited support
22 order upon the filing of all of the following:

23 (a) An application for an expedited child support
24 order, setting forth the minimum amount the obligated
25 parent or parents are required to pay pursuant to Section
26 4055 of this code or the minimum basic standards of
27 adequate care for Region 1 as specified in Sections 11452
28 and 11452.018 of the Welfare and Institutions Code.

29 (b) An income and expense declaration for both
30 parents, completed by the applicant.

1 (c) A worksheet setting forth the basis of the amount
2 of support requested.

3 (d) A proposed expedited child support order.

4 SEC. 3. Section 11356 of the Welfare and Institutions
5 Code is amended to read:

6 11356. (a) In any action filed by the district attorney
7 pursuant to Section 11350, 11350.1, or 11475.1, the court
8 may, on any terms that may be just, relieve the defendant
9 from that part of the judgment or order concerning the
10 amount of child support to be paid. This relief may be
11 granted after the six-month time limit of Section 473 of
12 the Code of Civil Procedure has elapsed, based on the
13 grounds, and within the time limits, specified in this
14 section.

15 (b) This section shall apply only to judgments or
16 orders for support that were based upon presumed
17 income as specified in subdivision (c) of Section 11475.1
18 and that were entered after the entry of the default of the
19 defendant under Section 11355. This section shall apply
20 only to the amount of support ordered and not that
21 portion of the judgment or order concerning the
22 determination of parentage.

23 (c) The court may set aside the child support order
24 contained in a judgment described in subdivision (b) if
25 the defendant's income was substantially different at the
26 time the judgment was entered from the income
27 defendant was presumed to have. A "substantial
28 difference" means that amount of income that would
29 result in an order for support that deviates from the order
30 entered by default by 20 percent or more. If the
31 difference between the defendant's actual income and
32 the presumed income would result in an order for
33 support that deviates from the order entered by default
34 by less than 20 percent, the court may set aside the child
35 support order only if the court states in writing or on the
36 record that the defendant is experiencing an extreme
37 financial hardship due to the circumstances enumerated
38 in Section 4071 of the Family Code and that a set aside of
39 the default judgment is necessary to accommodate those
40 circumstances.

(d) Application for relief under this section shall be accompanied by a copy of the answer or other pleading proposed to be filed together with an income and expense declaration and tax returns for any relevant years. The Judicial Council may combine the application for relief under this section and the proposed answer into a single form.

(e) The burden of proving that the actual income of the defendant deviated substantially from the presumed income shall be on the defendant.

(f) A motion for relief under this section shall be filed within 90 days of the first collection of money by the district attorney or the obligee. The 90-day time period shall run from the date that the district attorney receives the first collection or from the date that the defendant is served with notice of the collection, whichever date occurs first. If service of the notice is by mail, the date of service shall be as specified in Section 1013 of the Code of Civil Procedure.

(g) In all proceedings under this section, before granting relief, the court shall consider the amount of time that has passed since the entry of the order, the circumstances surrounding the defendant's default, the relative hardship on the child or children to whom the duty of support is owed, the caretaker parent, and the defendant, and other equitable factors that the court deems appropriate.

(h) If the court grants the relief requested, the court shall issue a new child support order using the appropriate child support guidelines currently in effect. The new order shall have the same commencement date as the order set aside.

SEC. 4. Section 11475.1 of the Welfare and Institutions Code is amended to read:

11475.1. (a) Each county shall maintain a single organizational unit located in the office of the district attorney which shall have the responsibility for promptly and effectively establishing, modifying, and enforcing child support obligations, including medical support, enforcing spousal support orders established by a court of

1 competent jurisdiction, and determining paternity in the
2 case of a child born out of wedlock. The district attorney
3 shall take appropriate action, both civil and criminal, to
4 establish, modify, and enforce child support and, when
5 appropriate, enforce spousal support orders when the
6 child is receiving public assistance, including Medi-Cal,
7 and, when appropriate, may take the same actions on
8 behalf of a child who is not receiving public assistance,
9 including Medi-Cal.

10 (b) Actions brought by the district attorney to
11 establish paternity or child support or to enforce child
12 support obligations shall be completed within the time
13 limits set forth by federal law. The district attorney's
14 responsibility applies to spousal support only where the
15 spousal support obligation has been reduced to an order
16 of a court of competent jurisdiction. In any action brought
17 for modification or revocation of an order that is being
18 enforced under Title IV-D of the Social Security Act (42
19 U.S.C. Sec. 651 et seq.), the effective date of the
20 modification or revocation shall be as prescribed by
21 federal law (42 U.S.C. Sec. 666(a)(9)), or any subsequent
22 date.

23 (c) (1) The Judicial Council, in consultation with the
24 department and representatives of the California Family
25 Support Council, the Senate Committee on Judiciary, the
26 Assembly Committee on Judiciary, and a legal services
27 organization providing representation on child support
28 matters, shall develop simplified summons, complaint,
29 and answer forms for any action for support brought
30 pursuant to this section or Section 11350.1. The Judicial
31 Council may combine the summons and complaint in a
32 single form.

33 (2) The simplified complaint form shall provide the
34 defendant with notice of the amount of child support that
35 is sought pursuant to the guidelines set forth in Article 2
36 (commencing with Section 4050) of Chapter 2 of Part 2
37 of the Family Code based upon the income or income
38 history of the defendant as known to the district attorney.
39 If the defendant's income or income history is unknown
40 to the district attorney, the complaint shall inform the

1 defendant that income shall be presumed in an amount
2 that results in a court order equal to the minimum basic
3 standard of adequate care for Region 1 as provided in
4 Sections 11452 and 11452.018 unless information
5 concerning the defendant's income is provided to the
6 court. The complaint form shall be accompanied by a
7 proposed judgment. The complaint form shall include a
8 notice to the defendant that the proposed judgment will
9 become effective if he or she fails to file an answer with
10 the court within 30 days of service.

11 (3) (A) The simplified answer form shall be written in
12 simple English and shall permit a defendant to answer
13 and raise defenses by checking applicable boxes. The
14 answer form shall include instructions for completion of
15 the form and instructions for proper filing of the answer.

16 (B) The answer form shall be accompanied by a blank
17 income and expense declaration or simplified financial
18 statement and instructions on how to complete the
19 financial forms. The answer form shall direct the
20 defendant to file the completed income and expense
21 declaration or simplified financial statement with the
22 answer, but shall state that the answer will be accepted
23 by a court without the income and expense declaration or
24 simplified financial statement.

25 (C) The clerk of the court shall accept and file
26 answers, income and expense declarations, and simplified
27 financial statements that are completed by hand
28 provided they are legible.

29 (4) (A) The simplified complaint form prepared
30 pursuant to this subdivision shall be used by the district
31 attorney or the Attorney General in all cases brought
32 under this section or Section 11350.1.

33 (B) The simplified answer form prepared pursuant to
34 this subdivision shall be served on all defendants with the
35 simplified complaint. Failure to serve the simplified
36 answer form on all defendants shall not invalidate any
37 judgment obtained. However, failure to serve the answer
38 form may be used as evidence in any proceeding under
39 Section 11356 of this code or Section 473 of the Code of
40 Civil Procedure.

(C) The Judicial Council shall add language to the governmental summons, for use by the district attorney with the governmental complaint to establish parental relationship and child support, informing defendants that a blank answer form should have been received with the summons and additional copies may be obtained from either the district attorney's office or the superior court clerk.

(5) Notwithstanding the amendments made to this chapter by Chapter 957 of the Statutes of 1996, the district attorney ~~may~~ shall continue to use the procedures and forms in effect on December 31, 1996, for establishing paternity and support orders until ~~July 1, 1997~~ *September 30, 1997, unless the district attorney has implemented the new procedures and forms authorized by Chapter 957 of the Statutes of 1996 prior to the effective date of this paragraph.* If the district attorney ~~implements~~ *has implemented* the new procedures and forms set forth in the amendments made to this chapter by Chapter 957 of the Statutes of 1996 prior to ~~July 1, 1997~~ *the effective date of this paragraph*, he or she shall utilize the new procedures and forms in all cases. ~~The~~ *Each* district attorney shall attach a notice to the ~~summons and~~ complaint which advises the parties when the action has been filed pursuant to the old or new procedures and forms. ~~The district attorney shall notify the State Department of Social Services when he or she implements the new procedures set forth in the amendments made in this chapter by Chapter 957 of the Statutes of 1996.~~ This paragraph shall become inoperative and shall have no force or effect after ~~June~~ *September 30, 1997.*

(d) In any action brought or enforcement proceedings instituted by the district attorney pursuant to this section for payment of child or spousal support, an action to recover an arrearage in support payments may be maintained by the district attorney at any time within the period otherwise specified for the enforcement of a support judgment, notwithstanding the fact that the child has attained the age of majority.

1 (e) The county shall undertake an outreach program
2 to inform the public that the services described in
3 subdivisions (a) to (c), inclusive, are available to persons
4 not receiving public assistance. There shall be
5 prominently displayed in every public area of every office
6 of the units established by this section a notice, in clear
7 and simple language prescribed by the Director of Social
8 Services, that the services provided in subdivisions (a) to
9 (c), inclusive, are provided to all individuals whether or
10 not they are recipients of public social services.

11 (f) In any action to establish a child support order
12 brought by the district attorney in the performance of
13 duties under this section, the district attorney may make
14 a motion for an order effective during the pendency of
15 that action, for the support, maintenance, and education
16 of the child or children that are the subject of the action.
17 This order shall be referred to as an order for temporary
18 support. This order shall have the same force and effect
19 as a like or similar order under the Family Code.

20 The district attorney shall file a motion for an order for
21 temporary support within the following time limits:

22 (1) If the defendant is the mother, a presumed father
23 under Section 7611 of the Family Code, or any father
24 where the child is at least six months old when the
25 defendant files his answer, the time limit is 90 days after
26 the defendant files an answer.

27 (2) In any other case where the defendant has filed an
28 answer prior to the birth of the child or not more than six
29 months after the birth of the child, then the time limit is
30 nine months after the birth of the child.

31 If more than one child is the subject of the action, the
32 limitation on reimbursement shall apply only as to those
33 children whose parental relationship and age would bar
34 recovery were a separate action brought for support of
35 that child or those children.

36 If the district attorney fails to file a motion for an order
37 for temporary support within time limits specified in this
38 section, the district attorney shall be barred from
39 obtaining a judgment of reimbursement for any support
40 provided for that child during the period between the

1 date the time limit expired and the motion was filed, or,
2 if no such motion is filed, when a final judgment is
3 entered.

4 Nothing in this section prohibits the district attorney
5 from entering into cooperative arrangements with other
6 county departments as necessary to carry out the
7 responsibilities imposed by this section pursuant to plans
8 of cooperation with the departments approved by the
9 State Department of Social Services.

10 Nothing in this section shall otherwise limit the ability
11 of the district attorney from securing and enforcing
12 orders for support of a spouse or former spouse as
13 authorized under any other provision of law.

14 (g) As used in this article, “enforcing obligations”
15 includes, but is not limited to, (1) the use of all
16 interception and notification systems operated by the
17 State Department of Social Services for the purposes of
18 aiding in the enforcement of support obligations, (2) the
19 obtaining by the district attorney of an initial order for
20 child support, which may include medical support or
21 which is for medical support only, by civil or criminal
22 process, (3) the initiation of a motion or order to show
23 cause to increase an existing child support order, and the
24 response to a motion or order to show cause brought by
25 an obligor parent to decrease an existing child support
26 order, or the initiation of a motion or order to show cause
27 to obtain an order for medical support, and the response
28 to a motion or order to show cause brought by an obligor
29 parent to decrease or terminate an existing medical
30 support order, without regard to whether the child is
31 receiving public assistance, and (4) the response to a
32 notice of motion or order to show cause brought by an
33 obligor parent to decrease an existing spousal support
34 order when the child or children are residing with the
35 obligee parent and the district attorney is also enforcing
36 a related child support obligation owed to the obligee
37 parent by the same obligor.

38 (h) As used in this section, “out of wedlock” means
39 that the biological parents of the child were not married
40 to each other at the time of the child’s conception.

1 (i) The district attorney is the public agency
2 responsible for administering wage withholding for the
3 purposes of Title IV-D of the Social Security Act (42
4 U.S.C. Sec. 651 et seq.). The district attorney shall seek an
5 earnings assignment order for support in any case as soon
6 as the obligor is in arrears in payment of support pursuant
7 to Chapter 8 (commencing with Section 5200) of Part 5
8 of Division 9 of the Family Code.

9 Nothing in this section shall limit the authority of the
10 district attorney granted by other sections of this code or
11 otherwise granted by law.

12 (j) In the exercise of the authority granted under this
13 article, the district attorney may intervene, pursuant to
14 subdivision (b) of Section 387 of the Code of Civil
15 Procedure, by ex parte application, in any action under
16 the Family Code, or other proceeding wherein child
17 support is an issue or a reduction in spousal support is
18 sought. By notice of motion, order to show cause, or
19 responsive pleading served upon all parties to the action,
20 the district attorney may request such relief as
21 appropriate which the district attorney is authorized to
22 seek.

23 (k) The district attorney shall comply with any
24 guidelines established by the State Department of Social
25 Services which set time standards for responding to
26 requests for assistance in locating absent parents,
27 establishing paternity, establishing child support awards,
28 and collecting child support payments.

29 (l) As used in this article, medical support activities
30 which the district attorney is authorized to perform are
31 limited to the following:

32 (1) The obtaining and enforcing of court orders for
33 health insurance coverage.

34 (2) Any other medical support activity mandated by
35 federal law or regulation.

36 (m) (1) Notwithstanding any other provision of law,
37 venue for an action or proceeding under this part shall be
38 determined as follows:

39 (A) Venue shall be in the superior court in the county
40 that is currently expending public assistance.

1 (B) If public assistance is not currently being
2 expended, venue shall be in the superior court in the
3 county where the child who is entitled to current support
4 resides or is domiciled.

5 (C) If current support is no longer payable through, or
6 enforceable by, the district attorney, venue shall be in the
7 superior court in the county that last provided public
8 assistance for actions to enforce arrearages assigned
9 pursuant to Section 11477.

10 (D) If subparagraphs (A), (B), and (C) do not apply,
11 venue shall be in the superior court in the county of
12 residence of the support obligee.

13 (E) If the support obligee does not reside in California,
14 and subparagraphs (A), (B), (C), and (D) do not apply,
15 venue shall be in the superior court of the county of
16 residence of the obligor.

17 (2) Notwithstanding paragraph (1), if the child
18 becomes a resident of another county after an action
19 under this part has been filed, venue may remain in the
20 county where the action was filed until the action is
21 completed.

22 (n) The district attorney of one county may appear on
23 behalf of the district attorney of any other county in an
24 action or proceeding under this part.

25 SEC. 5. This act is an urgency statute necessary for the
26 immediate preservation of the public peace, health, or
27 safety within the meaning of Article IV of the
28 Constitution and shall go into immediate effect. The facts
29 constituting the necessity are:

30 In order to insure that support orders for children are
31 processed without delay during the transition to new
32 procedures for establishing child support created in
33 Chapter 957 of the Statutes of 1996, it is necessary that this
34 act take effect immediately.